

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795 <div>STAFF REPORT</div>	Hearing Date/Agenda Number P.C. 2/12/03 Item 4.a. 2.	
	File Number CP02-01-002	
	Application Type Conditional Use Permit	
	Council District 10	
	Planning Area Almaden	
	Assessor's Parcel Number(s) 577-24-065	

PROJECT DESCRIPTION			Completed by: Teresa Estrada
Location: East side of Bose Lane approximately			
Gross Acreage: 0.94	Net Acreage: 0.94	Net Density: N/A	
Existing Zoning: R-1-8 Residence	Existing Use: Church		
Proposed Zoning: No change	Proposed Use: Addition of new 3,600 square foot building for day care center/preschool for up to 68 children and Sunday school		

GENERAL PLAN		Completed by: TE
Land Use/Transportation Diagram Designation Low Density Residential (5.0 DU/AC)		Project Conformance: [x] Yes [] No [] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING		Completed by: TE
North:	Single-family detached residential	R-1-8 Residence
East:	Single-family attached residential	R-1-8 Residence
South:	Single-family detached residential	R-1 -8 Residence
West:	Single-family detached residential	R-1 -8 Residence

ENVIRONMENTAL STATUS		Completed by: TE
<input type="checkbox"/> Environmental Impact Report found complete <input checked="" type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on January 8, 2003		<input type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete

FILE HISTORY		Completed by: TE
Annexation Title: Casey No. 5		Date: December 6, 1961

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input type="checkbox"/> Uphold Director's Decision	Date: _____	Approved by: _____ [X] Action [] Recommendation

OWNER/DEVELOPER	APPLICANT
St. Basil The Great, Greek Orthodox Church c/o Tony M. Pettis 6430 Bose Lane San Jose, CA 95120	Luke Stamos 6118 Oak Forest Way San Jose, CA 95120

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: TE

Department of Public Works

See Attached Final Memorandum dated February 18, 2003.

Other Departments and Agencies

GENERAL CORRESPONDENCE

See attached correspondence from Glaspy & Glaspy, Inc. dated January 6, 2003, and applicant response to this letter dated January 30, 2003. Additional correspondence received included form letters and petitions.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, St. Basil the Great Greek Orthodox Church, is requesting a Conditional Use Permit to add a 3,600 square foot preschool/day care center for up to 68 children to a legal non-conforming church facility on a 0.94-acre site. The existing facility was built in 1966 and predates the Conditional Use Permit requirement for churches that began in 1969. Child care centers are allowed by right at existing churches in residential areas, if they do not require any new construction. The conditional use permit is required in this case for the existing church use, as well as the new construction for the child care use.

The existing 6,700 square foot church building consisting of an office, kitchen, meeting hall, and a parish containing 212 linear feet of pew space, is located on the westerly portion of the irregular-shaped lot. A surface parking lot located to the rear of the church. The proposed preschool is proposed on vacant land at the easterly portion of the irregular-shaped site. The site is currently served by one-way ingress/egress driveways on either side of the property. Surrounding land uses consist of single-family detached residential uses surround the project site.

Project Description

The proposed project will add a new 3,600 square foot freestanding, modular building to be used for a daycare/preschool for up to 68 children and for use as a Sunday school. The school will contain four classrooms, an office, and restrooms. An outdoor play area will be located to the rear of the building. Wrought iron fencing and gates will secure openings between the building and adjacent properties. Wood, good neighbor fences exist and/or will be replaced around the perimeter of the site and will accommodate a fenced-off play area.

A drop-off area will be provided for passenger vehicles in front of the school within the parking lot. A total of 36 parking spaces will be provided for the church and school. The preschool will operate Monday through Friday from 6:30 a.m. to 7:00 p.m. Church services will be provided only on Sundays between the hours of 9:30 a.m. and 11:00 a.m. with Sunday school for children of the parishioners provided from 10:00 a.m. to 12 noon. The church does not propose to use the parish and meeting hall during the week when preschool is in session.

ENVIRONMENTAL REVIEW

An Initial Study was prepared for this project and the Director of Planning circulated a Mitigated Negative Declaration for public review on December 19, 2003. The key issues that were addressed include noise and traffic and are summarized below. (See staff report for Negative Declaration Protest for more detailed information on these issues).

Noise

The noise analysis provided for the proposal indicates that unmitigated project-generated noise exposure at the most impacted residential properties, adjacent to the play area to the north and south of the project site, would potentially be 60 dB DNL. This is 5 (five) dB in excess of the standards of the City of San Jose General Plan Noise Element. The unmitigated noise exposure at the most impacted residential properties adjacent to the planned play area to the east of the site would be 58 dB DNL, or 3 (three) dB in excess of the General Plan Noise Element. The cumulative (existing plus project) noise exposure at the residential properties to the north and south will be 62 dB DNL. The noise exposure for the residential property to the east will be 59 dB DNL.

This project will be required to provide mitigation consisting of the reconstruction or modification of the property line fence separating the new play area and the single-family residences to the north, east, and south, with a six foot high fence constructed of an acoustically-effective material. This mitigation will reduce children play noise to 51-52 dB DNL at the residential property line, in conformance with the General Plan Noise Element standards. Additionally, a condition incorporating the mitigation measures from the noise report, as well as limitations on the number of children outside during play hours, have been included in the permit to ensure noise levels are in conformance with the General Plan Noise Element standards.

Traffic

The Department of Public Works performed an in-house traffic analysis. The proposed project will generate 61 AM and 64 PM Peak Hour Trips (PHT). All of the signalized intersections in the surrounding area are operating primarily at acceptable Levels of Service (LOS "D" or better) with the exception of Almaden Expressway and Camden Avenue which operates at LOS "E" in the AM and "E+" in the PM peak hours. The LOS at this intersection is representative of Almaden Expressway's role as a major north/south commute corridor for the City. The addition of project generated traffic does not decrease the existing AM or PM LOS of this intersection. Based on an in-house traffic study for this project, there is sufficient capacity in the transportation system to accommodate traffic generated by this project in compliance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3).

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Low Density Residential (5.0 DU/AC) in that any developed parcel of two acres or less is deemed to be in conformance with the General Plan regardless of the land use designation. This 0.94 gross acre site has been the location of a church since 1966; therefore, the existing church use is deemed consistent with the General Plan. Child daycare facilities are also deemed to be acceptable uses within residentially designated properties.

ANALYSIS

The primary issues analyzed in this report include consistency with 1) City Council Policy No. 6-21 Church Location Policy, and 2) City Council Policy No. 6-14 the Guidelines for Child Day Care.

Council Policy No. 6-21 Church Location Policy

Project Acreage & Site Design. A number of neighbors have indicated that the project does not comply with the Church Location Policy guideline that the minimum lot size for construction of a new church facility should be one acre. The intent of this policy guideline was to prevent the construction of “new” churches on lands where there is no feasibility of expansion. The project site is approximately 0.94 gross acres in size. Staff feels that the acreage of the project site is adequate to accommodate the proposed building addition in that adequate internal and perimeter setbacks are provided. The existing church was developed prior to the adoption of the Church Location Policy.

Building Design. The project proposes to construct a 3,600 square foot modular building on the easterly portion of the project site and adjacent to the existing parking lot. The applicant’s proposal for a modular, single-story building is determined to be acceptable by staff due to its location at the rear of the site. The proposal provides a sloped roof with 4:12 pitch, consistent with the existing church building and character of other nearby residential structures in the neighborhood.

Building Setbacks. The Church Location Policy recommends a 25-foot building setback adjacent to all residential property lines. The intent of this guideline was to prevent the placement of larger sanctuary structures adjacent to residential uses without an adequate setback.

The existing project site is an irregularly shaped, multi-sided parcel. In instances such as this, the Zoning Ordinance, pursuant to section 20.30.210 B, authorizes the Director to make a determination as to whether certain property lines comprise side or rear property lines. The longer property line backing up to the rear yards on the southeast portion of the site is a similar situation to that on the north side of the project site. It is more a side property line than a rear property line, as the rear is generally opposite the front property line.

The project proposes an 8-foot minimum side setback for new single story structure adjacent to the southeast property line. Based on the angled orientation of the structure to the property line, only a very small portion of the proposed building has this minimum setback. The average setback along this property line is actually 29 feet.

This side setback, as well as the 20’ average side setback along the northerly side property line are justified given the irregular, multiple sided shape of the parcel and due to the fact that the proposed building is a low profile, single-story structure, rather than a taller assembly hall-type building. The provision of a sloped roof allows the new building to be more in keeping with the residential character of the neighborhood. For these reasons, staff feels that with respect to setbacks, the project meets the intent of the Church Location Policy. It should be noted that if the property was developed with a residential structure, as could be allowed under the R-1-8 Zoning, that a 30 foot tall, two-story structure could be built 5’-0” from the adjacent to the property line. A sixteen feet tall detached garage could be built on the property line with only a Building Permit if it met Fire Code requirements.

Landscaping & Parking. The Church Location Policy recommends a 5-foot landscape area along all property lines. Landscaped setbacks of 25- and 8-feet are provided along the property lines at the rear and side property lines of the site. Other areas within the parking lot are to be planted with a variety of landscaping, including trees. The plans indicate two sheds to be relocated from the rear of the site to the landscape planter adjacent to the southerly parking lot. These accessory structures of undetermined size are not recommended for approval at this time, as this is new plan revision proposal that has not been adequately analyzed by staff. However, staff has included a condition in the permit requiring that the siting of these structures be reviewed under a subsequent Permit Adjustment to identify whether this is an appropriate location for these structures.

The project currently provides a 3-foot landscape setback along the north and south property lines. Neighbors

identified the need for screening to be provided along these setbacks to address privacy issues. The most recent plans provided do not indicate the provision of any landscaping within these setback areas. A condition is included in the permit for a subsequent Permit Adjustment requiring the applicant to maximize the landscape setbacks to the fullest extent possible, and include the provision of screen trees and/or shrubbery along these property lines to address privacy issues.

City Council Policy No. 6-14 the Guidelines for Child Day Care

The Council Policy addresses several aspects of the location, physical design, and layout of new child care centers. This policy provides flexibility in location for new child care centers, and encourages new child day care centers, not only in these locations, but also in conjunction with church uses. Child care centers in existing church facilities are allowed by right. Staff feels that this church site is a suitable location for the proposed day care center, and is in substantial conformance with the overall policy objectives.

Facility Location. Neighboring property owners indicate that the project does not comply with the guidelines recommendation for project location. More specifically, the neighbors have identified that the proposed project does not comply with policies nos. 3.d. and 3.e. Policy 3.d states that new child day care centers are encouraged in residential areas on major collectors and arterial streets. Policy 3.e. states that centers for up to 12 children (increased to 14 by State Law) may be permitted on minor streets if the surrounding neighborhood already displays a mix of higher density residential and nonresidential uses. Policy 3.e. is not relevant or applicable in this case as it refers to child care as an incidental use in a residential unit.

Since the proposed child care facility is being located behind an existing church, staff feels that the integrity of the residential streetscape is not sacrificed. In addition, since the facility is limited in size and hours of operation, the proposed use should not have any significant traffic impacts beyond the capacity intended for neighborhood collector streets such as Bose Lane.

Parking. The church uses the parish for worship on Sunday from 9:30 to 11:00 a.m. Sunday school for children of the parishioners is provided from 10:00 a.m. to 12 noon. The preschool/day care center will operate Monday through Friday from 6:30 a.m. to 7:00 p.m. The church does not propose to use the parish and meeting hall during the week when the preschool is in session. A condition to preclude the simultaneous use of these facilities is included in the permit.

Upon development of the project, 36 parking spaces would be provided. The Zoning Ordinance requires the existing church to have 36 parking spaces for the existing 212 linear feet of seating based on the requirement of one parking space for every six linear feet of seats used for worship. The preschool/day care center will utilize nine (9) spaces for the proposed 68-child preschool/day care use, based on the Zoning Code standard of one space per 6 children, up to 5 spaces and thereafter 1 per 10 children (includes employee parking). Since church services are not proposed to be utilized simultaneously with the preschool/day care center, more than adequate parking is available for the project during the week and should not pose any impacts to the surrounding neighborhood in terms of creating on-street stacking during the child drop-off hours.

On Sundays, during church services, the preschool/day care building will be utilized during church service hours for Sunday school for the children of the congregation. The project will be conditioned to limit the occupancy of both the church and preschool/day care building so that parking demand does not exceed the 36 spaces that will be available on site on Sundays. With limitations on the hours of operation of the church and day care uses, as well as limitations on the occupancy of both uses as indicated, the proposed project can be found consistent with the zoning code parking requirement for both uses.

Circulation & Stacking. The on-site circulation is intended to be one way, as ingress to the site occurs via the southerly driveway on Bose Lane and egress proposed from the northerly driveway. The project will close an unused, duplicate driveway at the south property line. Circulation and drop-off/pick-up areas for the preschool are provided within the parking lot, which allows safe drop-off and adequate stacking capacity of vehicles. The Department of Public Works has indicated that on-site circulation for this site is considered an appropriate design for preschool/day care center drop-off and pick-up activities and does not expect stacking in the public street as a result of this project. Planning staff concurs with this assessment and feels the project is in compliance with the Guidelines for Child Day Care.

Playground Size, Bathroom Access, Student/Teacher Ratio. The City policy does not specifically identify standards with regards to playground size, bathroom access, educational requirements, or student/teacher ratio. The neighborhood has identified concerns for the adequacy of playground space, bathroom access and student/teacher ratios. These project elements are subject to the licensing requirements of the State of California, Department of Social Services, Community Care Licensing Division.

PUBLIC OUTREACH

Four community meetings regarding this project were held on April 5, June 10, July 9, and November 18, 2002. At the first meeting, which was held without the presence of Planning Staff, neighbors identified concerns with traffic, parking in the neighborhood, noise from Greek Festivals held in the past, and the site being used as a business.

At the June 10th and July 9th meetings, issues of concern raised by the neighbors included increased traffic, stacking on Bose Lane, noise, insufficient parking, inadequate landscaping and drop-off space, the need for a traffic report and concerns for trash. They expressed concern that the project would contribute to additional traffic congestion in the neighborhood. The neighbors also said the parking lot is full during worship and spills into the neighborhoods and that the addition of a school to the site for a church would impact parking and traffic in the neighborhood. They said that Bose Lane is of insufficient width for locating a preschool/day care center and requested information about other daycare centers and preschools in the area located on streets similar to Bose Lane, as well as information on traffic in the area. A number of residents said the site is not large enough to provide amenities for 68 children, and that the project should be scaled back to allow use just for Sunday school.

On November 18th, a fourth and final community meeting was held with the Council Member in attendance. Planning staff identified approximately 19 of 36 preschools/day care centers within Council District 9, and 5 of 14 preschools/day care centers in Council District 10 as being located on residential streets similar to Bose Lane. This was based on State Community Care Licensing information obtained through the Planning Department's GIS system. The Department of Public Works discussed the in-house traffic report prepared for the project and

informed neighbors that the project would not have a significant effect on transportation level of service (LOS) at intersections surrounding the site. Neighbors indicated the need for a number of items to be included with the proposal, including:

- 1) a no right turn out sign at the northerly exit of the church property, staggered pre-school drop-off hours,
- 2) a sound attenuation barrier between six and eight feet in height,
- 3) the planting of trees along the property lines,
- 4) low intensity parking lot lighting,
- 5) a traffic signal at the intersection of Bose Lane and Camden Avenue, and

6) a stop sign survey for a 4-way stop at the intersection of Via Amigos & Culligan.

A condition has been included in the permit requiring the no right turn sign at the northerly exit of the church property effective during the hours of 6 a.m. to 7 p.m. Monday through Friday. Plans also reflect this sign as requested by the neighborhood. The applicant has provided a 7-foot tall sound attenuation fence, which is above and beyond the 6-foot tall sound attenuation barrier required to mitigate noise to acceptable levels per the noise study. However, staff has included a condition for a Permit Adjustment to show the details of this fence on plans. Trees have not been included on the landscape plan along the northerly side property line. Staff has included a condition in the permit for a Permit Adjustment requiring the applicant to provide 15-gallon trees along this property line. The permit also includes a condition to file for a Fire Department variance to reduce the existing 18-foot wide driveway to 16 feet in order to increase landscape opportunities to 5 feet. Lighting for the project is not approved at this time, but is limited to no greater than 8 feet in height adjacent to residential uses and in conformance with the design requirements of the City's Lighting Policy. A Permit Adjustment is required for approval of any proposed light fixtures.

With regard to the request for a traffic signal at the intersection of Bose Lane and Camden Avenue and stop sign survey, it is staff's understanding that this signal has been moved up on the City's priority list from # 75 to #68, and is expected to be installed in conjunction with the Almaden Community Center and Library project. Additionally, a referral has been provided to the Department of Transportation regarding a potential stop sign warrant survey at Via Amigos & Culligan Boulevard.

Public hearing notices and community meetings were mailed to the owners and occupants within 1000 feet of the subject site and to attendees of community meetings. Staff has also received 13 photocopied form letters signed by neighbors in opposition to the project, as well as six (6) additional letters and electronic mail letters of opposition to the project were also provided by neighbors. Attached to the January 6, 2003 Glaspy & Glaspy letter is a petition signed by 50 neighbors in opposition to the project. Additionally, a petition signed by 156 persons in support of the project was also received by staff.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Low Density Residential (5.0 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Residence Zoning District.
3. A Mitigated Negative Declaration has been adopted for this project which indicates that certain mitigation measures will be incorporated into the project to prevent the occurrence of any significant adverse effect on the environment.
4. The existing church facility was built in 1966 and predates the Conditional Use Permit requirement for churches that began in 1969. The existing 6,700 square foot church building consisting of an office, kitchen, meeting hall, and a parish containing 212 linear feet of pew space, is located on the westerly portion of the irregular-shaped lot.

5. The project consists of a new 3,600 square foot preschool/day care center for up to 68 children to a legal non-conforming church on a 0.94-gross-acre site.
6. The school will contain four classrooms, an office, and restrooms. An outdoor play area will be located to the rear of the building with wrought iron fencing and gates to secure openings between the building and adjacent good neighbor fences.
7. Drop-off area will be provided for passenger vehicles in front of the school within the parking lot. A total of 36 parking spaces will be provided for the church and school.
8. The preschool will operate Monday through Friday from 6:30 a.m. to 7:00 p.m. Church services will be provided on Sunday between the hours of 9:30 a.m. and 11:00 a.m. with Sunday school for children of the parishioners provided from 10:00 a.m. to 12 noon.
9. The church does not propose to use the parish and meeting hall during the week when preschool is in session. This permit includes conditions related to the simultaneous uses.
10. The applicant's proposal for a modular, single-story building with a sloped roof with 4:12 pitch is consistent with the existing church building and the residential character of the neighborhood.
11. The project proposes an 8-foot side setback for the single story structure adjacent to the residential use. Staff has determined that this setback is justified as a "side" property line based on section 20.30.210 B of the Zoning Code.
12. The plans indicate two sheds to be relocated from the rear of the site to a landscape planter adjacent to the southerly parking lot. These accessory structures will not be approved at this time, but shall be reviewed under a Permit Adjustment to identify appropriate locations for these structures.
13. The project currently provides a 3-foot landscape setback along the north and south property lines. Neighbors identified the need for screening to be provided along this setback to address privacy issues. Although shown on the site plan, the landscape plan provided does not indicate the provision of any landscaping within these setback areas. A condition for a Permit Adjustment is included in the permit requiring the applicant to maximize the landscape setbacks to the fullest extent possible, and include the provision of screen trees and/or shrubbery along these property lines to address privacy issues.
14. The Council Policy 6-14 provides flexibility in location for new child care centers, and encourages new child day care centers in conjunction with church uses.
15. The preschool/day care center will utilize 9 spaces for the proposed 68-child preschool/day care use, based on the Zoning Code standard of one space per 6 children, up to 5 spaces and thereafter 1 per 10 children (includes employee parking). Since church services are not proposed to be utilized simultaneously with the preschool/day care center, adequate parking is available for the project during the week and will not pose any impacts to the surrounding neighborhood in terms of creating on-street stacking during the child drop-off hours. On Sundays during church services, the preschool/day care building will be utilized during church service hours for Sunday school for the children of the congregation.
16. The project will be conditioned to limit the occupancy of both the church and preschool/day care building so

that parking demand does not exceed the 36 spaces that will be available on site on Sundays. With limitations on the hours of operation of the church and day care uses as well as limitations on the occupancy of both uses, as indicated, the proposed project can be found consistent with the zoning code parking requirement for both uses.

17. Circulation and drop-off/pick-up areas for the preschool are provided within the parking lot consisting of 36 spaces which allows safe drop-off and adequate on-site stacking of vehicles with approximately 120' stacking lane available.
18. The Department of Public Works has indicated that on-site circulation for this site is considered an appropriate design for preschool/day care center drop-off and pick-up activities and does not expect stacking in the public street as a result of this project.
19. The review of the specific educational and per-child interior/exterior and play space requirements, is the purview of the State of California, Department of Social Services, Community Care Licensing Division.
20. Four community meetings concerning the project were held.
21. Neighbors indicated the need for a number of items to be included with the proposal, including 1) a no right turn out sign at the northerly exit of the church property, staggered pre-school drop-off hours, 2) a sound attenuation barrier between six and eight feet in height, 3) the planting of trees along the property lines, 4) low intensity parking lot lighting, 5) a traffic signal at the intersection of Bose Lane and Camden Avenue, and 6) a stop sign survey for a 4-way stop at the intersection of Via Amigos & Culligan.
22. Conditions have been included in the permit to address the neighborhood requests for limitations regarding traffic circulation from the project site, noise issues, landscaping, lighting, and traffic concerns.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. By the inclusion of conditions proposed by staff that prohibits the simultaneous use of the Church assembly and preschool/day care, adequate parking is provided on site.
3. The proposed project complies with all applicable provisions of the Zoning Ordinance.
4. The proposed project is in compliance with the California Environmental Quality Act.
5. The proposed project, with inclusion of conditions proposed by staff, conforms to the intent of City Council Policy 6-21, Church Location Policy.
6. The proposed project, with inclusion of conditions proposed by staff, conforms to the intent of City Council Policy 6-14, Guidelines for Child Day Care.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the

result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Except as noted under Concurrent Condition #33, construction and development shall conform to approved development plans entitled, "Conditional Use Permit Application CP02-01-002 the Lands of St. Basil Church, San José, CA. APN 577-24-065," dated 11/21/01, last revised February 12, 2003, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday.
5. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
6. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
7. **Lighting.** No new on-site lighting is approved at time but is subject to a Permit Adjustment. On-site lighting shall use low-pressure sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property and in conformance with the City Lighting Policy.
8. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted. Trash areas shall be maintained in a manner to discourage illegal dumping.
9. **Roof Equipment.** All roof equipment shall be screened from view.
10. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
11. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
12. **Street Trees.** Street trees as shown on approved plans shall be planted on the street frontage to the satisfaction of the Director of the Department of Streets and Traffic. A permit for this is required from the Department of Streets and Traffic, (408) 277-4373.

13. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
14. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-11789) to the satisfaction of the Director of Public Works:
 - a. *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.
 - b. *Geology.* A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - c. *Sanitary.* Submit a sanitary sewer plan at the improvement plan stage.
 - d. *Storm.* The Grading Plan for the project shall include the following:
 - i. Indicate the overland release path in arrows.
 - ii. The release path must be paved.
 - iii. On-site ponding must be less than one foot.
 - iv. Finished floor elevations must be one foot higher than overland release elevation.
 - v. Show the relocation of the on-site storm line and through curb drains.
 - e. *Electrical.* Applicant shall, at no cost to the City, install or relocate electrolier(s). Locate and protect existing electrical conduit in driveway and/or sidewalk during construction.
 - f. *Landscape.* Install street trees within the public right-of-way along the entire street frontage per City standards. Trees shall be installed in the park strip. The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only. Contact the City Arborist at (408) 277-2756 for the designated street tree.
 - g. *Transportation.* An in-house traffic analysis was prepared for the project. The traffic memorandum is dated October 15, 2002. The project was found to be in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3).
 - h. *Driveways, Sidewalks, Curbs.* Applicant shall, at no cost to the City, construct driveway(s) to proposed driveway width of 26', close unused driveway(s), repair broken sidewalk(s), repair broken curbs and gutters, and/or repair street pavement damaged during construction. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
 - i. *Minor Improvement Permit.* The applicant will be required to satisfy all Public Works conditions prior to the issuance of a Public Works Clearance. The clearance will require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the

Director of Public Works. This permit includes plans, insurance, bonds/deposit certificate, and engineering and inspection fees.

15. Building Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, CP 02-01-002, shall be printed on all construction plans submitted to the Building Division.
- b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- c. *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
- d. *Mechanical Equipment.* No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DBA at the residential property line.
- e. *Permit Adjustment.* A Permit Adjustment is required. See Concurrent Condition # 33 below.
- f. *Archaeology.* There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric and/or historic resources.
 - (1) If no resources are discovered, the archaeologist shall submit a report to the Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.
 - (2) If evidence of any archaeological, cultural and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial and curation of archaeological resources).
 - (3) In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
 - (a) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are native American. If the Coroner determines that the

remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify descentance of the deceased Native Americans. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

- (b) A final report shall be submitted to the Director of Planning prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resource analysis methodology and conclusions and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Planning.

- 16. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
- 17. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
- 18. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise approved in writing by the Fire Chief.
- 19. **Fire Extinguisher System.** Building(s) shall be provided with an automatic fire extinguisher system. Systems serving more than 100 heads shall be supervised by a remote alarm system to the satisfaction of the Fire Chief.
- 20. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
- 21. **Hours.** The preschool/day care center shall be limited to operation between the hours of 7 a.m. to 6 p.m. Monday through Friday, unless the City approves a subsequent Conditional Use Permit for other hours of operation. The church may operate between the hours of 6:00 a.m. to 12:00 Midnight Sunday through Saturday.
- 22. **Parking.** Church assembly shall not occur concurrently with the school to ensure that adequate parking is provided on-site.
- 23. **Maximum Church Facility Capacity.** 144 including Sunday school activities.
- 24. **Maximum Number of Students.** A maximum of 68 students may be enrolled at the preschool/day care center during the hours of 7:00 a.m to 6:00 p.m. Monday through Friday.
- 25. **Sunday School Maximum Occupancy.** A maximum of 50 children will be allowed in the preschool/day care center building for Sunday school purposes.
- 26. **Staggered Drop-Off.** Drop-off times for children shall abide by times indicated by the operational notes on approved plans to ensure better dispersal of the influx of students.

27. **Maximum Children in Play Area.** The number of children in the play area shall be limited to a maximum of 22 children at any one time. Play hours shall not exceed 4 hours in any 24-hour period.
28. **Noise.** The project shall comply with the requirements of the noise report, prepared for the project entitled, "Noise Assessment Study for the Planned Day-Care Center, St. Basil Greek Orthodox Church, 6430 Bose Lane, San Jose" by Edward L. Pack Associates, Inc. dated May 14, 2002.
29. **Amplified Sound.** All amplified sound shall be contained within the buildings and the buildings shall be adequately insulated to prevent sound from emanating outside.
30. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
31. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
32. **Parking Lot Signage.**
- a. "No Trespassing/Loitering" SJMC 10.20.140 (A) and 10.20.140 (D) posted at the entrances of parking lots and located in other appropriate places. Signs must be at least 2'x1' in overall size, with white background and black 2" lettering.
 - b. "No Right Turns During Preschool Hours" sign shall be installed at the northwest corner of the project site at the northerly driveway exit onto Bose Lane indicating no right turns between the hours of 6:00 a.m. to 7:00 p.m. Monday through Friday to the satisfaction of the director of Planning.
33. **Permit Adjustment.** The applicant shall agree to file and implement a Permit Adjustment(s) to address the following plan revisions/issues and project requirements to the satisfaction of the Director of Planning and prior to issuance of a building permit:
- a. *Lighting.* Provide details of proposed light fixtures, if any.
 - b. *Details.* Fence design and heights, gates, required signage.
 - c. *Storage sheds.* The location and size of storage sheds shall be reviewed under a permit adjustment to identify appropriate locations for these structures.
 - d. *Landscaping.* Landscaping shall be provided along the northerly property line, and shall include screen trees 15 gallon in size. The applicant shall file for a Variance from the Fire Department to reduce the existing northerly 18-foot wide driveway to 16 feet or to the satisfaction of the Fire Chief, in order to increase landscape opportunities to a maximum width of 5 feet. Landscaping along the southerly property line shall be sawcut to maximize the average landscape setback. One trees shall be provided every 4 parking spaces.
34. **Other Permits.** The applicant shall obtain necessary permits from outside agencies with jurisdiction over the daycare/preschool use.

35. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
36. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
37. **Directory.** A lighted directory showing addresses and locations of all buildings on site shall be provided at the main entrance of the site.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

Attachments: Guidelines for Child Day Care, Church Location Policy, Public Works Final Memorandum, Letter from Glaspy & Glaspy, Inc. dated January 6, 2003, and applicant response letter to Glaspy & Glaspy, Inc. letter dated January 30, 2003, Petition entitled "Preschool", Memorandum from Lucas Stamos to Sam Yung, dated January 20, 2001.

c: Building Division (2)
Engineering Services
Tom Rouse, 6417 Bose Lane San Jose, CA 95120
Torbin Rasmussen, 1101 Culligan Boulevard San Jose, CA 95120

TE:li/207-10